IN THE

Supreme Court of the United States

No. 73-5744

STATE OF LOUISIANA

versus

BILLY J. TAYLOR

Appeal from the Supreme Court of the State of Louisiana

MOTION TO DISMISS

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

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22nd JUDICIAL DISTRICT

JULIAN J. RODRIGUE
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22nd JUDICIAL DISTRICT

[illegible]

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MOTION TO DISMISS APPEAL

Now into Court comes the State of Louisiana, through the undersigned Assistant Attorney General of the State of Louisiana, and moves this Honorable Court to dismiss the appeal in the above numbered and entitled cause of action for the following reason, to-wit:

The sole question presented by defendant's appeal is the constitutionality of Article 7, Section 21 of the Constitution of the State of Louisiana and Article 402 of the Louisiana Code of Criminal Procedure.

Article 7, Section 41 of the Louisiana Constitution provides as follows:

> "The legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the Clerk of the District Court a written declara-

> tion of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict."

Article 402 of the Code of Criminal Procedure further provides:

> "A woman shall not be selected for jury service unless she has previously filed with the Clerk of Court of the Parish in which she resides a written declaration of her desire to be subject to jury service."

These authorities provide a general exemption for women from jury service. Neither the Constitution nor the Code of Criminal Procedure purports to exclude women from jury service, but rather accords them the privilege to serve without imposing the duty to do so. Women may waive this privilege by simply filing with the Clerk of Court of the Parish in which they reside a written declaration of their desire to serve.

The following quotation from *Hoyt v. State of Florida*, 368 U.S. 57, 82 S.Ct. 159 (1961), shows that the Florida statute in question was almost identical to the Louisiana one in the case at bar. (At page 160)

> "The jury law primarily in question is Fla. Stat., 159, §40.01 (1), F.S.A. This Act, which requires that grand and petit jurors be taken from 'male and female' citizens of the State possessed of certain qualifications,[1] contains the following proviso:

> 'provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list.'
>
> Showing that since the enactment of the statute only a minimal number of women has so registered, appellant challenges the constitutionality of the statute both on its face and as applied in this case. For reasons now to follow we decide that both contentions must be rejected."

The contention in the Florida case is the same as in the instant case, that the state statute works as an unconstitutional exclusion of women from jury service.

In upholding the constitutionality of the Florida statute this Court said:

> "Manifestly, Florida's §40.01 (1) does not purport to exclude women from state jury service. Rather, the Statute 'gives to women the privilege to serve but does not impose service as a duty'."

In view of this Court's decision in *Hoyt v. State of Florida*, supra, the Louisiana Constitutional and Codal provisions are not unconstitutional, defendant has not been deprived of a fair and impartial trial and this appeal should be dismissed.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
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CERTIFICATE OF SERVICE

I, Walter Smith, Assistant Attorney General for the State of Louisiana, counsel for appellee herein, depose and say that on the ..... day of Janary, 1974, I served a copy of the foregoing motion to dismiss on counsel of record for the defendant, Billy J. Taylor, appellant herein, by mailing same herein to his post office box, P.O. Box 1029, Covington, Louisiana 70433.

All parties required to be served have been served.

_____

WALTER SMITH

Sworn to and subscribed
before me this _____
day of January, 1974.

_____

JULIAN J. RODRIGUE
NOTARY PUBLIC